

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA**

VFS LEASING CO.,)	
)	
PLAINTIFF,)	
)	CIVIL ACTION NO.: 3:06CV638-SRW
VS.)	
)	
G. F. KELLY, INC d/b/a KELLY)	
TRUCKING; and GUY KELLY,)	
)	
DEFENDANTS.)	

**MOTION TO EXTEND SCHEDULE FOR SUBMISSION
IN OPPOSITION TO MOTION FOR SUMMARY JUDGEMENT**

Comes now the Defendants G. F. Kelly, Inc. D/b/a Kelly Trucking and Guy Kelly and, pursuant to Rule 56(f) of the Federal Rules of Civil Procedure, move the court to extend the schedule set out in the Order issued on November 3, 2006 for filing their Submission in Opposition to Motion for Summary Judgement. As grounds for this motion, Defendants show the following:

1. The Scheduling Order was issued in this case on November 3, 2006. It provides that all discovery be completed by April 1, 2006.
2. The factual issues in this case involve the amount of the deficiencies being claimed by the Plaintiff and whether the repossessed tractors were disposed of in a commercially reasonable manner and in accordance with the leases and applicable law. Defendants need to do discovery on this issue. (See Affidavit of James H. Starnes-Exhibit "A"). A Notice of Deposition requesting testimony and documents relating to a limited number of issues has been provided to the attorney for Plaintiff. (Exhibit "B").
3. The Plaintiff filed a Motion for Summary Judgement on November 27, 2006, less than 30 days after entry of the Scheduling Order. According to the Order of November 3, 2006, Defendants must file its submissions in opposition to the Motion by December 18, 2006.
4. **Defendants request that the time for filing the Submission in Opposition to Motion for Summary Judgement be extended to January 31, 2007.** This will allow sufficient time to take the necessary depositions, review the documents produced and receive and review the transcript.

Respectfully Submitted,

/s/ James H. Starnes

James H. Starnes, Attorney for Defendants

OF COUNSEL:

P. O. Box 590003

Birmingham, AL 35259-0003

(205) 320-0800

/s/ S. Sanford Holliday

S. Sanford Holliday, Attorney for Defendants

OF COUNSEL:

P. O. Box 727

Roanoke, AL 36274

(334)863-2717

CERTIFICATE OF SERVICE

I hereby certify that I have the foregoing pleading electronically using the CM/ECF system which will electronically serve a copy of same on all counsel of record on this the 29th day of November, 2006 as follows:

David B. Hall
Jason Asbell
BAKER DONALDSON
420 North 20th Street, Suite 1600
Birmingham, AL 35203

/s/ James H. Starnes

OF COUNSEL

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA

VFS LEASING CO.,

PLAINTIFF,

VS.

G. F. KELLY, INC d/b/a KELLY
TRUCKING; and GUY KELLY,

DEFENDANTS.

CIVIL ACTION NO.: 3:06cv638-SRW

NOTICE OF TAKING DEPOSITION UPON ORAL EXAMINATION

The Defendants, G. F. Kelly, Inc. and Guy Kelly, will take the deposition of the REPRESENTATIVE(S) OF VFS LEASING CO. ("VFS"). The deposition will be taken at the time and place set out herein. The oral examination will encompass those matters discoverable under Rule 26 of the Federal Rules of Civil Procedure.

Said depositions will be held at Baker Donelson on DECEMBER 14, 2006 BEGINNING PROMPTLY AT 9:00 AM, and shall continue to time thereafter until the same has been completed.

In connection with the examination, Sunbelt requests the production at the taking of the deposition of material and documents subject to production under Rule 30(b) (5) and (6) and 34 of the Federal Rules of Civil Procedure. The material and documents are identified hereafter.

Pursuant to Rule 30(b)(6), VFS is requested to designate one or more officers, directors, or managing agents or other persons who consent to testify on its behalf, to provide testimony on the following matters:

1. The date, time and place of repossession of the tractors at issue in this case.
2. The mileage of each of the tractors at the time of repossession.
3. The condition of the tractors at the time of repossession.
4. Any work performed on the tractors after repossession and prior to resell.
5. All efforts made to publicize the availability of the tractors for resell.
6. The resell of the tractors.

IDENTIFICATION OF MATERIALS AND DOCUMENTS TO BE PRODUCED

Pursuant to Rule 30(b)(5) VFS is requested to produce the following documents:

1. All documents reflecting the date, time and place of repossession of the tractors at issue in this case.
2. All documents reflecting the mileage of each of the tractors at the time of repossession.
3. All documents and photographs reflecting the condition of the tractors at the time of repossession.
4. All documents reflecting any work performed on the tractors after repossession and prior to resell.
5. All documents reflecting efforts made to publicize the availability of the tractors for resell.

6. All documents reflecting the date of resell of each tractor, the name and address of the purchaser and the amount paid



JAMES H. STARNES, Attorney for Plaintiffs

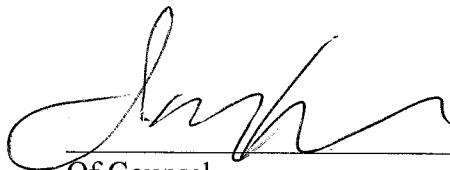
OF COUNSEL:

P. O. Box 590003
Birmingham, AL 35259
(205) 320-0800

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing pleading on all counsel of record by placing the same in the U.S. Mail, postage prepaid and properly addressed, on this the 29th day of November, 2006 as follows:

Jason Asbell
BAKER DONALDSON
420 North 20th Street, Suite 1600
Birmingham, AL 35203



Of Counsel

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AFFIDAVIT OF JAMES H. STARNES

STATE OF ALABAMA
COUNTY OF JEFFERSON

Before me, the undersigned authority in and for said state and county personally appeared James H. Starnes who, after being duly sworn, deposes and says as follows:

1. I am one of the attorneys for the defendants in this case.
2. The factual issues in this case involve the amount of the deficiencies being claimed by he Plaintiff. The Defendants contend that the tractors were disposed of by the Plaintiff for less than their value and thus the amount owed by defendants is substantially less than the amount claimed.
3. After receiving the scheduling order on November 3, 2006, I began preparation of a Rule 30(b) Deposition Notice to VFS so I could obtain the testimony and documents needed by the expert we have retained to determine the value of the tractors at the time of repossession. I had previously advised the attorney for VFS that I would need information on the mileage and condition of the tractors at the time of repossession, the manner in which the tractors were publicized for resell, the name of the purchaser, and the amount paid for each tractor. I dictated the Notice prior to Thanksgiving but it was not typed until November 28. It was served on Plaintiffs attorney on that date.
4. On Monday, November 27, less than 30 days after the Scheduling order was issued, I received electronically the Motion for Summary Judgement filed by VFS. According to a previous Order issued by the Court on November 3, 2006, I have 21 days, or until December 18, 2006, to file the Submission in Opposition to the Motion for Summary Judgement. This is not sufficient time to conduct the need discovery described above. The testimony and documents requested in the Deposition Notice are necessary for obtaining the required affidavit from the

expert witness to properly oppose the Motion for Summary Judgement. I request that the time for filing the Submission be extended to January 31, 2007 which will allow sufficient time to take the depositions, review the documents produced and receive and review the transcripts

5. Extending the time for filing the submission approximately 45 days will not prejudice any party or delay the ultimate resolution of this case.

/s/James H. Starnes

James H. Starnes

SWORN TO AND SUBSCRIBED BEFORE ME this the 30 day of November, 2006.

/s/Tammy Pennington

Notary Public

My Commission Expires: _____